

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

CIVIL ACTION No. _____

NOAH GREENBERG,
Plaintiff

v.

TOWN OF FALMOUTH and
GANNETT FLEMING, INC.,
Defendants

04-11934 GAO

MAGISTRATE JUDGE Alexander

RECEIPT # 58432
AMOUNT \$ 150
SUMMONS ISSUED 3
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. ✓
DATE 7-30-04

COMPLAINT FOR COPYRIGHT INFRINGEMENT
AND DEMAND FOR TRIAL BY JURY

Plaintiff, Noah Greenberg, brings this action against the Town of Falmouth, a municipal corporation organized under the laws of the Commonwealth of Massachusetts and Gannett Fleming, Inc., a Pennsylvania corporation. For this Complaint, Noah Greenberg alleges knowledge with respect to his own acts and those of Noah Greenberg Associates, and otherwise on information and belief alleges as follows:

I. SUBJECT MATTER JURISDICTION

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States of America (17 U.S.C. § 101 *et seq.*).
2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

II. VENUE

4. Venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that this lawsuit arises under an Act of Congress related to copyrights and the defendants are subject to personal jurisdiction in this district such that they may be found in this district. The claims alleged in this action arose in this district.

III. PARTIES AND PERSONAL JURISDICTION

5. Plaintiff, Noah Greenberg, is an adult resident of 22 Beebe Acres Road, Falmouth, Massachusetts 02540, and is a professional architect and does business in the Eastern District of Massachusetts.

6. Defendant, The Town of Falmouth, is a municipal corporation organized under the laws of the Commonwealth of Massachusetts, with an address of 59 Town Hall Square, Falmouth, Massachusetts 02540, which exists in the Eastern District of Massachusetts.

7. Defendant, Gannett Fleming, Inc., is registered in the Commonwealth of Massachusetts as a foreign corporation, with a principal place of business at 207 Senate Avenue, Camp Hill, Pennsylvania 17011. Gannett Fleming Inc., has a regular place of business in the Commonwealth of Massachusetts, and does business in the Eastern District of Massachusetts.

8. The acts of infringement and other wrongful acts alleged in this Complaint occurred in the Eastern District of Massachusetts.

IV. PLAINTIFF'S COPYRIGHTS

9. On February 3, 2003, the plaintiff registered its Architectural Drawings entitled "Department of Public Works" with the United States Copyright Office. Noah Greenberg, a U.S.

citizen, created an original work consisting of an architectural design, plans, elevations, and text entitled "Department of Public Works." A true and accurate copy of the registration is attached hereto as **Exhibit 1**. Said registration is in full force and effect.

10. On February 11, 2003, the plaintiff registered its Architectural Work entitled "Department of Public Works" with the United States Copyright Office. Noah Greenberg a U.S. citizen, created an original work consisting of an architectural design, plans, elevations, and text entitled "Department of Public Works." A true and accurate copy of the registration is attached hereto as **Exhibit 2**. Said registration is in full force and effect.

V. CAUSES OF ACTION

COUNT I
INFRINGEMENT OF COPYRIGHT

11. The plaintiff realleges and incorporates by reference paragraphs 1 through 9, inclusive, of this Complaint as fully set forth herein.

12. In 1993, the Town of Falmouth released a Request for Proposals for Architectural Consultation Services for renovations and additions to a public works facility.

13. Following the Town of Falmouth's Request for Proposals for Architectural Consultation Services for the above-mentioned public works facility, the plaintiff submitted an architectural design, consisting of plans and elevations for the proposed project.

14. Further work by the Town of Falmouth on the above-mentioned public works facility was delayed for unrelated reasons until 2001.

15. In 2001, the Town of Falmouth released a Request for Qualification for Architectural Design Services in relation to the above-mentioned public works facility.

16. The Town of Falmouth's Request for Qualification for Architectural Design Services included reproductions of plaintiff's original drawings, for responses to be based upon. This was done in violation of the plaintiff's copyright.

17. Subsequent to the Town of Falmouth's Request for Qualification for Architectural Design Services in relation to the above-mentioned public works facility, Gannett Fleming, Inc., created blue prints that were a derivative of the plaintiff's original drawings, in violation of the plaintiff's copyright.

18. Plaintiff believes that the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of the plaintiff.

19. As a result of the defendants' infringement of the plaintiff's copyright and exclusive rights under copyright, plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for defendants' infringement. The plaintiff is further entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

COUNT II
REQUEST FOR INJUNCTIVE RELIEF

20. The plaintiff realleges and incorporates by reference paragraphs 1 through 18, inclusive, of this Complaint as fully set forth herein.

21. The defendants are attempting to construct the above-mentioned public works building with blue prints that are a derivative of the plaintiff's original drawings, in violation of the plaintiff's copyright.

22. The conduct of the defendants has and is causing, and unless enjoined and restrained by this Court, will continue to cause the plaintiff great and irreparable injury that cannot fully be

compensated or measured in money.

23. Plaintiff has no adequate remedy at law.

24. Pursuant to 17 U.S.C. §§ 502, 502(a) and 503, plaintiff is entitled to injunctive relief prohibiting the defendant from further infringing plaintiff's copyright, and ordering defendants to destroy all blueprints and site plans made in violation of the plaintiff's exclusive rights.

COUNT III
VIOLATION OF MASSACHUSETTS GENERAL LAWS, CHAPTER 93A
GANNETT FLEMING, INC., ONLY

25. The plaintiff realleges and incorporates by reference paragraphs 1 through 23, inclusive, of this Complaint as fully set forth herein.

26. At all times relevant hereto, the defendant Gannett Fleming, Inc., was engaged in trade or commerce as those terms are defined in Massachusetts General Laws, chapter 93A.

27. The acts of the defendant, including but not limited to those set forth above, constitute unfair or deceptive acts or practices while engaged in trade or commerce.

28. The defendant committed the aforesaid unfair or deceptive acts or practices knowingly, willfully, and intentionally.

29. The defendant's intentional violation of Massachusetts General Laws, chapter 93A, has caused the plaintiffs-in-counterclaim substantial damage.

IV. PRAAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against the defendants as follows:

A. That this Court enter a judgement against the defendants on Counts One and Two of this Complaint, finding that the defendants committed copyright infringement and that they willfully and

intentionally infringed the plaintiff's rights in the above-mentioned federally registered copyrights under 17 U.S.C. §§ 106 and 501.

B. On Count One, for defendants' profits and for damages in such amount as may be found; alternatively, for maximum statutory damages in the amount of \$150,000.00 with respect to each infringement, or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c) together with reasonable attorneys' fees and costs.

C. That this court enter a temporary restraining order prohibiting the defendants from using any blueprints based in whole or in part on the plaintiff's original drawings, until further order from the court.

D. That this court, after hearing, to enter a preliminary injunction prohibiting these defendants from using any blueprints based in whole or in part on the plaintiff's original drawings, until further order from the court.

E. That this court enter a final injunction prohibiting these defendants from using any blueprints based in whole or in part on the plaintiff's original drawings.

F. That this Court order the defendants, to file and serve within thirty (30) days of this order, a written statement under oath setting forth, in detail, and certifying the manner in which defendants have complied with the order and injunction pursuant to 11 U.S.C. § 1116(a).

G. That this court require the destruction of all blueprints or site plans made in violation of the plaintiff's exclusive rights.

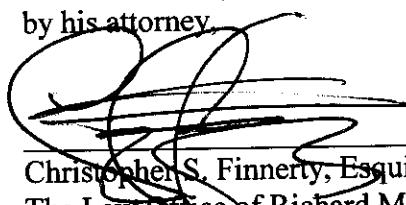
H. That this Court enter a judgement against the defendant, Gannett Fleming, Inc., on Count Three of this Complaint, that the defendant committed a violation of Massachusetts General Laws, Chapter 93A.

I. On Count Three, for all damages suffered as a result for the defendant, Gannett Fleming Inc.'s, unfair and deceptive acts and practices, and that same be trebled pursuant to Massachusetts General Laws, Chapter 93A, together with interest, costs, and reasonable attorneys' fees.

J. For such other and further relief as the Court may deem just and equitable.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

The plaintiff,
Noah Greenberg,
by his attorney,



Christopher S. Finnerty, Esquire
The Law Office of Richard M. Russell, P.C.
205 Worcester Court, Unit B 2
Falmouth, Massachusetts 02540
Tel. No. 508.457.7557
BBO No. 657320

Dated: September 3, 2004

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Noah Greenberg

(b) County of Residence of First Listed Plaintiff Barnstable
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
Law Office of Richard M. Russell, P.C.
205 Worcester Court, Unit B2
Falmouth, MA 02540 (508) 457-7557

DEFENDANTS

Town of Falmouth, and
Gannett Fleming, Inc.

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

04-11934 GAO

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | DEF | | DEF |
|---|----------------------------|---------------------------------------|--|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation |
| | | | <input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 1910 OSHA Act <input type="checkbox"/> 152 Recovery of Defunded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Asslt., Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehcle <input type="checkbox"/> 355 Motor Vehcle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 400 State Regulation <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | CIVIL RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | PRISONER PETITIONS <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark |
| | | | Labor <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DOL C/DIW W (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RS1 (405(g)) | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DOL C/DIW W (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RS1 (405(g)) |
| | | | FEDERAL TAXSUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) | OTHER STATUTES <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 905 Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

17 U.S.C Section 101, (copyright infringement)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):
IF ANY JUDG E DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Noah Greenberg v. Town of Falmouth

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Christopher S. Finnerty

ADDRESS 205 Worcester Court Unit B2, Falmouth, MA 02540

TELEPHONE NO. (508)457-7557